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Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

July 27, 1978

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Lt. Colonel C. A. Pennington
Arizona Department of Public Safety
2310 North 20th Avenue
P. O. Box 6638
Phoenix, Arizona 85005

Re: 78-167 (R78-102)

Dear Colonel Pennington:

Your letter of April 5, 1978 requested an analysis of A.R.S. § 39-161. You stated that an applicant for registration as a security guard denied criminal involvement on his application form. The applicant was issued a temporary security guard registration. It was then discovered that the applicant had a substantial criminal record. A permanent license was denied and criminal prosecution is now contemplated.

A.R.S. § 39-161, presentment of false instrument for filing, provides in pertinent part:

A person who acknowledges, certifies . . . or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, shall be punished by imprisonment in the State prison for not more than five years or by imprisonment in the county jail for not more than one year.

You present the questions:

1. Whether the application for security guard registration is "an instrument"?
2. Whether the Department of Public Safety Licensing Unit is a "public office"?
3. Whether a filing occurred?

It is our opinion that all three statutory qualifi-

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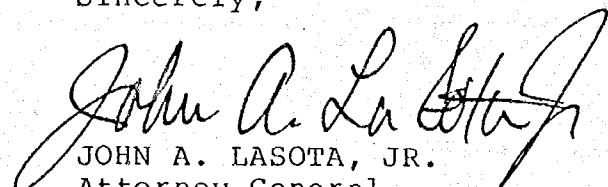
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cations have been met and that prosecution of the applicant under A.R.S. § 39-161 would be appropriate. Lewis v. State, 32 Ariz. 182, 256 P. 1048 (1927) gave a broad interpretation to the term "instrument". In Lewis the court held that an application for a state loan was an "instrument" within the meaning of the statute. The court observed that the statute "was passed for express purpose of preventing the filing or recording of any false instrument no matter what its nature, if that instrument was of a character which the state considered important enough to make the instrument a public record." A.R.S. § 32-2602.B provides that a registration application shall be open to inspection as a public record. The security guard registration application is an "instrument".

Similar logic compels the conclusion that the Department of Public Safety Licensing Office is a "public office". The Department of Public Safety is a state agency. The Licensing Unit is part of the agency. The "public records" language of A.R.S. § 32-2602.B reinforces the conclusion that the licensing unit is a "public office".

Finally, the license applicant has acknowledged, certified or offered to be filed, an instrument. The application form contained the applicant's certification that "all the foregoing statements are true and correct." The applicant received a provisional registration certificate under provisions of A.R.S. § 32-2622.B pursuant to his representations in the application. The applicant's conduct is clearly within the statutory requirements of A.R.S. § 39-161.

Sincerely,


JOHN A. LASOTA, JR.
Attorney General

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